
(1978) 06 KAR CK 0031
In the Karnataka High Court
Case No : WP. 430 of 1978

Chandrashekar Math

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 30-06-1978

Acts Referred:

Constitution of India, 1950 — Article 16(1)

Citation : (1979) 1 KarLJ 27

Hon'ble Judges : Rama Jois, J

Judgement

1. The petitioners who are the Assistant Geophysicists in the Department of Mines and Geology of the State Govt. who were all along and even now given the same pay scale as is given to the Assistant Geologists in the same department are aggrieved by the disparity brought about in their pay scales compared with those of the Asst. Geologists, only between the period commencing from 23rd August 1973 up to 1st January 1977.

2. The facts of the case briefly stated are as follows: In the Department of Mines and Geology there are two categories of posts one going by the designation of Asst Geologists and the other called Asst Geophysicists. The minimum qualification prescribed for both the posts was Bachelors Degree with Geology as one of the subjects. The pay scale for both the posts was Rs. 200-375 as fixed in the Karnataka Civil Services (Revised pay) Rules, 1961. The pay scales were revised by the Karnataka Civil Services (Revised pay) Rules, 1970, which came into effect from 1-1-1970. Under the said rules also both the posts were given the pay scales of Rs. 225-450. Thereafter the minimum qualification prescribed for both the categories of posts was raised and the minimum qualification fixed for both the posts was Masters degree. In view of this change by an order made by the State Govt. on 12/14th June 1974, the State Govt. directed the revision of pay scale of the post of Asst Geologists only from Rs.225-10-245-15-320-EB-20-400-25-450 to Rs.275-25-375-EB-25-550 with effect from 23-8-1973. As the said pay scale was not extended to the Asst Geophysicists who according to them are similarly situate in all respects as compared to Asst Geologists, a

representation was made by their association to the State Govt. complaining about the discrimination brought about between the two categories of posts from 23-8-1975. A copy of the representation d/ 26th June 1974 is produced at Ext."B" To the said representation a reply d/ 23-11-1974 was given by the Govt. in which the petitioners and others were directed to approach the Pay Commission in the matter. Accordingly, the petitioners and others made representations before the pay Commission. On the basis of the recommendations of Pay Commission new rules were framed called the "Karnataka Civil Services (Revised Pay) Rules, 1976", which came into force from 1st January 1977. It is not disputed that according to the said rules the pay scale of Rs.660-1300 is the pay scale fixed for both the categories of posts. But the case of the petitioners is that their grievance regarding their claim for pay scale of Rs.275-550 with effect from 23-8-1973 remains unredressed. Again they approached the Govt. for extending to them the same pay scale which was given to the Asst Geologists with effect from 23-8-1973. An endorsement d/ 22-12-1977 was issued to the first petitioner. The said endorsement reads as follows:

"With reference to his petition d/ 7-1-77 addressed to Secretary, Commerce and Industries Department for revision of pay scale of Asst Geophysicists Department of Mines and Geology with effect from 23-8-1973, Sri S.S. Chandrasekharamath, Asst. Geophysicist, is informed that the request cannot be complied with."

As the demand of the petitioners for the pay scale of Rs.275-550 from 23-8-1973, was not complied with by the Govt the petitioners have now presented this writ petition.

3. Sri C.N. Kamath, learned Counsel for the petitioners, submitted that there was absolutely no justification for the Govt. to deprive the pay scale of Rs.275-550 to the Asst. Geophysicists with effect from 23-8-1973 when the said pay scale was extended to the Asst Geophysicists.

4. As stated earlier, the minimum qualification prescribed for both the posts was Bachelors degree with Geology as one of the subjects. The minimum qualification prescribed for both the posts was raised and Masters Degree in Science (Geology) was prescribed as the minimum qualification. As seen from the Govt. order d/ 12-14th June 1974 (Ext."A") it is for that reason the pay scale for Asst Geologists was enhanced to Rs.275-550. But while doing so the fact that the minimum qualification was raised for the posts of Asst Geophysicists also was lost sight of. The above submission of the petitioners stands fully supported by the letter d/ 28-3-1977 written by the Director to the Secretary, Official Pay Committee. As the said letter gives the gist of the entire case of the petitioners it is necessary to set out the contents of the said letter, which reads as follows:

"In the department of Mines and Geology the work assigned to both Asst. Geologists and Asst Geophysicists are similar. As per the Govt. notification No.CI 80 EMG 72 d/ 26-6-73 have changed the qualification from B.Sc., to M.Sc., for

recruitment to the post of both Asst Geologists and Asst Geophysicists with subjects Geology or applied Geology. The duties and responsibilities for the both posts are identical. Prior to the Govt. Order No.CI 23 AMG 73 d/ 12/14 revising pay scales of Asst Geologists to Rs.275-550 both the posts carried pay scales of Rs.225-450.

Under these circumstances, proposals have been sent to Govt to revise the pay scales of Asst Geophysicists this department from Rs.225-450 to Rs.275-550 with effect from 23-8-1973 on par with Asst Geologists on the grounds that the minimum qualification for both the posts prescribed is M.Sc., and with the identical duties and responsibilities. In response to this Govt. in their letter No.CI 126 AMG 74 d/23-11-74, have directed to approach the pay commission.

Govt. in their official memorandum No.FD 139 SRP (3) 76 d/ 24-12-1976 have revised the pay scales of all the State Govt. employees and while doing so the pay scales of both the posts under question have been raised to Rs.660-1300 w.e.f. 1-1-1977. The Asst. Geophysicists of this department have represented that they have been deprived of the monetary benefit since their pay will be fixed in the lower stages to that of the Asst Geologists inspite of their putting more years of service as they were deprived of the benefit for the revised pay scales of Rs.275-550 with effect from 23-8-1973.

As such they have requested to revise the pay scales of Asst Geophysicists also to Rs.275-550 with effect from 23-8-1973.

The total strength of the Asst Geophysicists is only 4 and they have to camp throughout the year in view of the limited staff. The Asst Geophysicists must have M.Sc., in Applied Geology which is a three years course after the graduation they have to handle the most costliest and latest equipments like terrameter, electric logger, Magnetometer, Seismic timer etc, for ground-water developments and investigation of minerals.

In view of the above, I recommend that the pay scales of Asst Geophysicists may also be revised from Rs.225-450 to Rs.275-550 as has been done to the cadre of Assistant Geologists with effect from 23-8-1973.

The original representation is enclosed for kind intimation."

5. The above letter of the Director fully sets out, the similarity between the posts of Asst Geophysicists to which category the petitioners belong and the posts of Asst Geologists to whom higher pay scale was extended from 23-8-1973, as also the reason for extending the higher pay scale, which equally applied to the case of the petitioner.

6. It is true that whether two categories of posts in a department or service of the State Govt should be treated as equal for the, purpose of extending similar pay scales, is a matter which has to be decided by the State Govt. Any such evaluation cannot be undertaken by the Court. But in a case where it is established that the State Govt itself has deduced Such equivalence, but, without

any basis extended higher pay scale to one category of civil servants and denied it to the other, the Court can certainly examine whether discrimination is made in matters of employment as between two classes of civil servants which is prohibited by Cl(1) of Art. 16 of the Constitution read with Art. 14.

7. With this background I shall now proceed to examine the case of the petitioners. The fact that the State Govt itself, on the evaluation of the qualification and nature and duties of these two categories of posts has arrived at the conclusion that Asst Geologists and Asst Geophysicists are equal stands established by the following fact viz, the pay scale which had been given to Asst Geologists and Asst Geophysicists, from time to time which was and is as follows:

Year Pay

Asst Geologists Asst Geophysicists

1-1-1961 Rs. 200-375 Rs. 200-375

1-1-1971 Rs. 225-450 Rs. 225-450

23-8-1973 Rs. 275-550 "

1-1-1977 Rs. 660-1300 Rs. 660-1300

8. From the above statement it may be seen that the Asst Geophysicists have been treated in all respects equal to the Asst Geologists in the matter of pay scales right from 1-1-61 till now except for the period between 23-8-73 and 1st January 1977. The petitioners have also produced a few orders of transfer and postings as Exts. G, H, J and K which disclose that the posts of Asst Geologists and Asst Geophysicists are equal and interchangeable. The director also in his letter referred to above has pointed out the similarity in all respects, between the two categories of posts, including the minimum qualification as also duties and responsibilities. How between these two categories of posts which are similar in all respects and treated as such right from 1-1-61 and even now, differentiation in the matter of pay scale could be brought about only between 23-8-1973 and 1-1-77, is the question that arises for consideration. These two categories of posts were treated equal for the purposes of extending the pay scale as, on 1-1-61 and as on 1-1-70 and also from 1-1-77. There is, no rational basis for treating them differently between the period commencing from 23-8-1973 up to 1-1-1977.

9. The reason for difference in the pay scales is explained in paras 4 to 6 of the statement of objections. The reason given is that there is difference in the nature of duties and responsibilities between the Asst Geologists and Asst Geophysicists and therefore they are not similarly situate. It is further submitted that they also belong to different cadres.

10. I see no force in the above submission for the reason that even according to the decision of the State Govt as reflected in the Karnataka Civil Services (Revised Pay) Rules, 1961 and also Karnataka Civil Services (Revised, Pay)

Rules, 1970 as also the Karnataka Civil Services (Revised Pay) Rules, 1976 the posts are treated as equivalent and there is no disparity between the pay scales of Asst Geophysicists and Asst Geologists maintained by the State Govt. As already pointed out even under the latest Rules a common pay scale of 660-1300 is extended not only to the Asst Geologists but also to the Asst Geophysicists. The reason given in the statement of objection in support of the differentiation in the pay scales brought about between the period commencing from 23-8-73 up to 1-1-77 viz, that it is on account of the difference in the nature of duties and responsibilities is highly unconvincing in view of the equal pay scale extended by the State to these two cadres of posts throughout i.e., from 1-1-61 up to 1-1-71 and also from 1-1-77. Further it is also established that the posts are equal and interchangeable from the posting orders produced as Exts. G, H, J and K as also from the letter of the Director. Moreover from Govt Order d/ 12/14th June 1974 (Ext."A") it is established that the reason for raising pay scale of Asst Geologists was the raising of the minimum qualification for recruitment from Bachelors degree to Masters degree. This is also clear from the Director's letter. The said reason is equally applicable to Geophysicists also.

11. Therefore, I am of the opinion, that once the State Govt itself has evaluated the nature of duties and responsibilities of the posts and had extended equal pay scales from 1-1-61 to 23-8-73 and has extended a common pay scale from 1-1-77 also, there was absolutely no basis on which the Asst Geophysicists could be subjected to discrimination in the matter of pay scale between 23-8-73 to 1-1-77 The above question is also covered by a Division Bench decision of this Court in B.G. Gupta v State of Mysore, (1967) 1 MysLJ. 208.

12. In the sad case the petitioner, who was an apiarist, was a Class II Officer in the Dept of Agriculture. The pay scale of all Class II Officers in the Department was fixed at Rs. 225-500 as per the 1957 revision of pay scales which came into force from 1-1-1957, but a pay scale of Rs.200-350 was extended to the petitioner therein. After he made a representation to the Govt which was also supported by the recommendation of the Head of the Dept, the pay scale of Class II Officers, including an Apiarist which post was held by the petitioner in that petition was fixed at Rs.275-20-375-25-600 with effect from 1-1-61. When the petitioner requested for the pay scale of Rs.225-500 from 1-1-57 to 1-1-61 the same was rejected by the Govt. Hence, he presented the said writ petition. In the said case while rejecting the contention that the petitioner was not entitled to pay scale of Rs.225-500 between 1-1-57 to 1-1-61, this Court observed as follows:

"We cannot accede to the suggestion of Mr.Rangaswamy appearing for Govt that that similitude did not exist during the period between January 1, 1957 and January 1, 1961. Indeed the opinion formed by the Director of Agriculture was communicated in the year 1959, and, it is seen from his communication to the Govt that he was of the opinion that the duties of an Apiarist were all along at least equal to the duties of a District Agricultural Officer. The proper way of

understanding the order made by Govt on December 6, 1961, in the context of the recommendation made by the Director of Agriculture, is, to say that at all relevant times the post of a District Agricultural Officer was equal to that of an Apiarist from the point of view of the nature of the duties to be performed by the occupant of the respective post. Had not Government reached that conclusion, they would not have accorded sanction to the application of the higher pay scale to the post of an Apiarist with effect from January 1, 1961.

That being the true position, it would only be logical to say that the higher pay scale which was applicable to the post of a District Agricultural Officer with effect from January 1, 1957, should also have been made applicable to the post of an Apiarist from that date.

The question whether the nature of the duties of two given posts is similar, is a question for assessment by the authority determining the pay scale. It is not for this Court to review an assessment made in that way. But once the assessment is made by the authority and the result of the assessment is a conclusion of similarity, so long as the posts are in the same class, and so are similar in every respect, there could be no disparity in the pay scales. Now, in the case before us Govt on a question of fact, deduced such similarity, and that deduction" is what creates the right in the petitioner to similar treatment even in respect of the antecedent period between January 1, 1957 and January 1, 1961."

13. The principle laid down in the above case applies on all fours to the facts of this case. The State Govt itself has extended an identical pay scale to the posts of Asst Geologists and Asst Geophysicists in the Karnataka Civil Services (Revised Pay) Rules, 1961 and also the Karnataka Civil Services (Revised Pay) Rules 1970, which came into force from 1-1-1961 and 1-1-1970 respectively. After 1st January 1970 before the next revision which took place with effect from 1-1-77 there was an intermediate revision of pay scale of only the Asst Geologists. Their pay scale was enhanced from Rs.225-450 to Rs.275-550. This was done on the ground that the minimum qualification for the posts of AsstGeologists was raised from Bachelors Degree to Masters Degree. The said, reason equally applied to the posts of Asst Geophysicists because the mini-mum qualification fixed for the aid posts was also raised from Bachelors Degree to Masters Degree with effect from the same date. Subsequently, when the State Govt revised the pay scale of its civil servants from 1st January 1977, as already pointed out, an identical pay scale of Rs.660-1300 has been extended to the Asst Geophysicists and Asst Geologists. In the circumstances, there was absolutely no basis for subjecting the Asst Geophysicists for discriminatory treatment in the matter of pay scale between 23-8-1973 and 1st January 1977.

14. After the case was argued on merits the learned Counsel appearing for the respondents raised a preliminary objection. He submitted that the writ petition should be dismissed on the ground of delay. I do not think that the petitioners are guilty of any laches or delay on the basis of which the writ petition can be dismissed. Immediately after the higher pay scale of Rs.275-550 was extended

to the posts of Asst Geologists, the petitioners approached the Govt for extending the higher pay scale to the Asst. Geophysicist also. An endorsement dated 23-11-74 (Ext."C") was issued to the petitioner asking them to approach the Pay Commission. Accordingly, they approached the Pay Commission. The Pay Commission, recommended the same pay scale for both categories of posts with effect from 1-1-77. But nothing was said with reference to the specific grievances of the petitioners that they should have been extended the scale of pay of Rs.275-550 with effect from 23-8-73 to 1st January 1977. When, the Pay Commission report was under consideration by an Official Pay Committee appointed by the Govt. the Director wrote to the Official Pay Committee (Ext."E") supporting the case of the petitioners that they are entitled to the pay scale of Rs.275-550 from 23-8-73. It is only on 22nd December 1977 (Ext."F") an endorsement was issued to the petitioners rejecting their claim for the pay scale of Rs.275-550 with effect from 23-8-73. Shortly thereafter the writ petition was presented on 7-1-73. Under such circumstances, the writ petition cannot be rejected on the ground of delay. (See *Purushotham Lal v. Union of India*, AIR. 1973 SC. 1088 and *G. Hanumantha Rao v. Union of India*, (1974) 2 KarLJ. 504.

15. Before concluding it is necessary to point out that this writ petition which involves the individual grievance of the petitioners regarding the pay scale to which they are entitled to from 23-8-73 has been presented by four petitioners by paying only one set of Court fee. As the grievance of the petitioners is individual, the petitioners ought to have filed 4 separate petitions. However as one petition was registered without noticing this defect petitioners were directed to pay an additional Court-fee of Rs.300. Accordingly the learned Counsel for the petitioners has furnished the deficit Court fee of Rs.300.

16. For the reasons stated above rule is made absolute. A writ in the nature of mandamus shall issue to the 1st respondent to extend the pay scale of Rs.275-25-375-EB-25-550 to the petitioners with effect from 23-8-73 up to 1-1-77 and to give all consequential benefits to the petitioners including re-fixation of pay from 1-1-77 under the provisions of the Kar State Servants (Raved Pay) Rules, 1976, and the consequential benefits flowing from such re-fixation. No costs.